

STATE WATER CONTROL BOARD  
NOTICE OF INTENT TO PROVIDE SECTION 401 WATER QUALITY CERTIFICATION  
OF NORFOLK DISTRICT ARMY CORPS OF ENGINEERS REGIONAL PERMIT 05 FOR  
CONSTRUCTION OF SMALL IMPOUNDMENTS

November 16, 2007

Pursuant to Virginia Water Protection Permit Regulation 9 VAC 25-210-130.H, the State Water Control Board (Board) is giving notice of its intent to provide Section 401 Water Quality Certification for certain activities authorized by the above referenced U.S. Army Corps of Engineers (USACE) Norfolk District Regional Permit after considering public comment for a 30-day period starting November 19, 2007. The Regional Permit 05, which expires on January 31, 2011 can be found on the USACE web site at <http://www.nao.usace.army.mil/technical%20services/Regulatory%20branch/06-RP-05.pdf>.

The Board can only issue final Section 401 Certification of a nationwide or regional USACE permit if the permit meets the requirements of the VWP regulation and after advertising and accepting public comment for 30 days on its intent to provide certification. While no changes have occurred to the regional permit, the Board is providing an opportunity to comment on its preliminary conditional certification, as described in the attached preliminary decision.

The State Water Control Board will issue its final §401 Water Quality Certification for certain activities authorized by the above referenced U.S. Army Corps of Engineers (USACE) Norfolk District Regional Permit at the end of the 30 day comment period and after any comments received are considered. The details of the Board's preliminary decision are available attached to this notice or on the Department of Environmental Quality web site at <http://www.deq.virginia.gov> or by calling or emailing David Davis, Director, Office of Wetlands and Water Protection. Written comments, including those by email, must be received no later than 5:00 p.m. on December 19, 2007 and should be submitted to David Davis at the address given below. Only those comments received within this period will be considered by the Board. Written comments shall include the name, address, and telephone number of the writer, and shall contain a complete, concise statement of the factual basis for comments. **CONTACT PERSON:** For additional information, contact: David L. Davis, Director, Office of Wetlands and Water Protection - Department of Environmental Quality, P. O. Box 1105, Richmond, Virginia 23218, Phone (804) 698-4105, Fax (804) 698-4347, or E-mail [dldavis@deq.virginia.gov](mailto:dldavis@deq.virginia.gov).

The Department of Environmental Quality is also soliciting public comments on the consistency of the issuance of these permits with Virginia's Coastal Resources Management Program (VCP) pursuant to the federal Coastal Zone Management Act of 1972, as amended. Water Quality Certification pursuant to Section 401 of the federal Clean Water Act is one of the Enforceable Programs of the VCP. The deadline for public comments on the Coastal Zone consistency notice is December 19, 2007. For more information, contact Ellie Irons at (804)698-4325, E-mail [elirons@deq.virginia.gov](mailto:elirons@deq.virginia.gov).

STATE WATER CONTROL BOARD  
PRELIMINARY DECISION ON SECTION 401 WATER QUALITY CERTIFICATION OF NORFOLK  
DISTRICT ARMY CORPS OF ENGINEERS REGIONAL PERMIT 05 FOR CONSTRUCTION OF  
SMALL IMPOUNDMENTS

November 16, 2007

The State Water Control Board tentatively provides conditional §401 Water Quality Certification for certain activities covered under the RP-05 for Construction of Small Impoundments as meeting the requirements of the Virginia Water Protection Permit Regulation, which serves as the Commonwealth's §401 Water Quality Certification, provided that the following conditions are met:

1. Agricultural surface water withdrawals from nontidal waters that total less than one million gallons in a single month do not require flow-by of water past the impoundment. Withdrawals greater than or equal to one million gallons in a single month will be subject to a DEQ permit, unless otherwise exempt, that includes withdrawal limits to ensure the protection of in-stream beneficial uses downstream of the impoundment.
2. Surface water withdrawals from nontidal waters for all other purposes that total less than 10,000 gallons per day do not require flow-by of water past the impoundment. Withdrawals greater than or equal to 10,000 gallons per day will be subject to a DEQ permit, unless otherwise exempt, that includes withdrawal limits to ensure the protection of in-stream beneficial uses downstream of the impoundment.
3. The permittee shall report surface water withdrawals: 1) where the average daily withdrawal during any single month exceeds 10,000 gallons per day for the purposes of, but not limited to, public water supply, manufacturing, mining, commercial, institutional, livestock watering, artificial fish culture, and steam-electric power generation uses; and 2) where the withdrawal exceeds 1 million gallons in any single month for the purpose of irrigating crops. Permittees are not required to report the withdrawal of surface water if the withdrawal is made from a pond that only collects diffuse surface water (pond that is not located in a wetland or on an intermittent or perennial stream).

Pursuant to our Virginia Water Protection Permit Regulation 9VAC 25-210-130.H, the State Water Control Board can only issue final §401 Certification of a nationwide or regional USACE permit if the permit meets the requirements of the VWP regulation and after advertising and accepting public comment for 30 days on its intent to provide certification. The State Water Control Board will issue its final §401 Water Quality Certification for the above referenced Regional Permit authorized by the Norfolk District U.S. Army Corps of Engineers at the end of that period and after any comments received are considered.